



PUBLIC NOTICE

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DA 09-1836
August 20, 2009

**WIRELINE COMPETITION BUREAU EXTENDS COMMENT DUE DATES ON QWEST
CORPORATION'S PETITION FOR FORBEARANCE
IN THE PHOENIX, ARIZONA METROPOLITAN STATISTICAL AREA**

WC Docket No. 09-135

Comments Due: September 21, 2009
Reply Comments Due: October 6, 2009

On March 24, 2009, Qwest Corporation (Qwest) filed a petition pursuant to section 10 of the Communications Act of 1934, as amended (the Act),¹ requesting that the Commission forbear from applying to Qwest certain obligations in the Phoenix-Mesa-Scottsdale Metropolitan Statistical Area (Phoenix MSA).² The Wireline Competition Bureau (Bureau) released a public notice seeking comment on the Qwest Phoenix MSA Petition on July 29, 2009.³ Related to the Qwest Phoenix MSA Petition, on August 20, 2009, the Bureau issued a public notice seeking comment on remands by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) of two Commission forbearance orders.⁴ In particular, the D.C. Circuit remanded the *Verizon 6 MSA Forbearance Order* to the

¹ See 47 U.S.C. § 160.

² Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135 (filed Mar. 24, 2009) (Qwest Phoenix MSA Petition). Specifically, according to its Petition, Qwest seeks forbearance from loop and transport unbundling obligations pursuant to sections 251(c) and 271(c)(2)(B)(ii) of the Act; Part 61 dominant carrier tariffing requirements; Part 61 price cap regulation; and dominant carrier requirements arising under section 214 of the Act and Part 63 of the Commission's rules concerning the processes for acquiring lines, discontinuing services, and assignment or transfer of control. See *id.* at 7-10. Qwest requests forbearance from *Computer III* requirements, including Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) requirements for its mass market and enterprise switched access services "to the extent that Qwest offers information services in conjunction with such services" and "any remaining BOC-specific *Computer III* obligations." *Id.* at 11. Qwest also proposes certain conditions that it would be "willing to accept" if the Commission were to grant the requested forbearance relief. *Id.* at 8-10.

³ See *Pleading Cycle Established for Comments on Qwest Corporation's Petition For Forbearance in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Public Notice, DA 09-1653 (WCB rel. July 29, 2009) (*Qwest Phoenix MSA Public Notice*) (requesting comments by August 28, 2009 and reply comments by September 28, 2009).

Commission for further consideration of its decision to deny Verizon relief from section 251(c)(3) unbundling obligations in the 6 MSAs on the “limited ground” that the Commission had not explained its departure from precedent.⁵ On August 5, 2009, the D.C. Circuit remanded the *Qwest 4 MSA Forbearance Order* at the Commission’s request.⁶ Comments on the remands of the *Verizon 6 MSA Forbearance Order* and the *Qwest 4 MSA Forbearance Order* are due by September 21, 2009 and replies are due by October 6, 2009.⁷

The remands by the D.C. Circuit of the *Verizon 6 MSA Forbearance Order* and the *Qwest 4 MSA Forbearance Order* are relevant to the Qwest Phoenix MSA Petition because in both the *Verizon 6 MSA Forbearance Order* and the *Qwest 4 MSA Forbearance Order* the Commission considered whether to grant forbearance relief from the same unbundling requirements for which Qwest is now seeking forbearance in the Phoenix MSA.⁸ In the interest of allowing all interested parties additional time to consider the recent D.C. Circuit remands and to develop a thorough and complete record in this proceeding concerning Qwest’s recent petition for forbearance in the Phoenix MSA, the Bureau hereby

⁴ See *Wireline Competition Bureau Seeks Comment on Remands of Verizon 6 MSA Forbearance Order and Qwest 4 MSA Forbearance Order*, WC Docket Nos. 06-172, 07-97, Public Notice, DA 09-1835 (WCB rel. Aug. 20, 2009) (*Verizon 6 MSA and Qwest 4 MSA Remand Public Notice*). On June 19, 2009, the D.C. Circuit issued an opinion and remanded the *Verizon 6 MSA Forbearance Order* to the Commission. *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, Inc.*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21294, para. 1 (2007) (*Verizon 6 MSA Forbearance Order*), remanded, *Verizon Tel. Cos. v. FCC*, No. 08-1012, slip. op. (D.C. Cir. June 19, 2009) (*Verizon v. FCC*). Specifically, Verizon sought forbearance in the 6 MSAs for its mass market switched access services from the following: tariffing requirements, price cap regulation, and dominant carrier requirements concerning the processes for acquiring lines, discontinuing services, assignment or transfer of control, and acquiring affiliations. *Id.* Verizon also sought forbearance from loop and transport unbundling obligations under section 251(c)(3) of the Act, and all *Computer III* obligations (e.g., ONA and CEI requirements). *Id.*

⁵ *Verizon v. FCC*, slip. op. at 3. The D.C. Circuit found that the Commission, without explanation, “changed tack from its precedent and applied a per se market share test that considered only actual, and not potential, competition in the marketplace.” *Id.* at 18.

⁶ *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11730, para. 1 (2008) (*Qwest 4 MSA Forbearance Order*), remanded, *Qwest Corporation v. FCC*, No. 08-1257 (D.C. Cir. Aug. 5, 2009) (*Qwest Corporation v. FCC*). For mass market and enterprise services, Qwest sought forbearance from dominant carrier tariffing requirements in Part 61 of the Commission’s rules; Part 61 price cap regulations; dominant carrier requirements arising under section 214 of the Act and Part 63 of the Commission’s rules concerning the processes for acquiring lines, discontinuing services, and assignment or transfer of control; and for certain of Qwest’s services, *Computer III* requirements including CEI and open network architecture ONA requirements. *Id.* Qwest also sought forbearance in the 4 MSAs from loop and transport unbundling obligations pursuant to sections 251(c) and 271(c)(2)(B)(ii) of the Act. *Id.*

⁷ See *Verizon 6 MSA and Qwest 4 MSA Remand Public Notice* at 1.

⁸ See *Verizon 6 MSA Forbearance Order*, 22 FCC Rcd at 21294, para. 1 (noting Verizon’s request for forbearance from loop and transport unbundling obligations under section 251(c)(3) of the Act); *Qwest 4 MSA Forbearance Order*, 23 FCC Rcd at 11730, para. 1 (noting Qwest’s request for forbearance in the 4 MSAs, including Phoenix, from loop and transport unbundling obligations pursuant to sections 251(c) and 271(c)(2)(B)(ii) of the Act); Qwest Phoenix MSA Petition at 7 (seeking forbearance in the Phoenix MSA from loop and transport unbundling obligations pursuant to sections 251(c) and 271(c)(2)(B)(ii) of the Act).

extends the comment and reply comment due dates in this proceeding to match those in the remanded proceedings. Parties therefore have until **September 21, 2009** to file comments and **October 6, 2009** to file reply comments on the Qwest Phoenix MSA Petition in this docket. All other filing requirements set forth in the Public Notice establishing the initial pleading cycle remain in effect.⁹

For further information regarding this proceeding, contact Denise Coca, Wireline Competition Bureau, (202) 418-0574 or Tim Stelzig, Wireline Competition Bureau, (202) 418-0942.

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⁹ See *Qwest Phoenix MSA Public Notice* at 2-4.